

# BOARD OF SUPERVISORS

## Brown County



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### PLAN, DEV. & TRANS. COMMITTEE

Bernie Erickson, Chair

Mike Fleck, Vice Chair

Dan Haefs, Dave Kaster, Norb Dantine

### PLANNING, DEVELOPMENT & TRANSPORTATION COMMITTEE

Thursday, December 15, 2010

6:20 p.m.

Room 210, City Hall

100 North Jefferson Street

- I. Call Meeting to Order.
- II. Approve/Modify Agenda.
  1. Approval of Cat Island Grant Agreement for the Wisconsin Harbor Assistant Program.
  2. Such other matters as authorized by law.

Bernie Erickson, Chair

#### Attachments

Notice is hereby given that action by the Committee may be taken on any of the items which are described or listed in this agenda. Please take notice that it is possible additional members of the Board of Supervisors may attend this meeting, resulting in a majority or quorum of the Board of Supervisors. This may constitute a meeting of the Board of Supervisors for purposes of discussion and information gathering relative to this agenda.

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**GRANT AGREEMENT**

**Identification Number: 0495-10-03**

**Wisconsin Harbor Assistance Program**

**By and Between**

**County of Brown**

**and**

**The Wisconsin Department of Transportation**

**Date: October, 2010**

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## INTRODUCTION

THIS GRANT AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between the County of Brown, Wisconsin (hereinafter called County) and the Wisconsin Department of Transportation (hereinafter called WisDOT).

## WITNESSETH

WHEREAS, County seeks to perform restoration of the Cat Islands chain in Green Bay for the purpose of placing clean dredge materials from the Port of Green Bay; and

WHEREAS, the maintenance of commercial harbor activity in the County of Brown is an integral part of the County's Three-Year Harbor Development Statement of Intentions; and

WHEREAS, County has applied to WisDOT for a Harbor Assistance Program grant under s. 85.095, Wis. Stats., for reimbursement of funds expended for the work described herein.

NOW, THEREFORE, the parties do hereby mutually agree that WisDOT shall provide financial assistance and County shall accept financial assistance in accordance with all applicable statutes and administrative rules, and with the following terms and conditions:

## ARTICLE 1.0 DEFINITIONS

- 1.1 "Approved project" means the performance of the work described in Section 2.1 of this Agreement.
- 1.2 "County" means the County of Brown.
- 1.3 "Secretary" means the Secretary of the Wisconsin Department of Transportation.
- 1.4 "WisDOT" means the Wisconsin Department of Transportation.
- 1.5 "Cat Islands chain" means the group of islands located in Green Bay and more specifically described in the certified survey made part of this Agreement by reference as Attachment II.

## **ARTICLE 2.0 APPROVED PROJECT**

### **Section 2.1 Project Description**

The approved project consists of the following elements:

1. Provide stone for the construction of the 2.5 mile wave barrier to anchor the restored Cat islands; and
2. Final engineering; and
3. The performance of project management functions:
  - (a) Contractor selection; and
  - (b) Project supervision to accomplish all elements.

### **Section 2.2 Scope of Work**

County shall perform the following approved project work:

- (a) Prepare final approved project plans and specifications to WisDOT's satisfaction for the letting of competitive bids for the completion of project elements 1 through 3.
- (b) Complete the approved project in accordance with plans and specifications prepared under task 2.2(a) above which plans and specifications will be made part of this Agreement by reference as Attachment I.
- (c) Perform or provide for the performance of scheduled and as-needed special technical inspections of all contractors' work to assure contract, plans and specification compliance, and issue orders or arrange for remedial action as may be necessary to complete the approved project.

### Section 2.3 Grant Amount

(a) WisDOT grants to County an amount equal to a maximum of \$6,518,068 with an additional \$623,767 made available for this project in the 2012-2013 state budget. These combined amounts, or an amount equal to 80 percent of eligible costs (described in Section 3.3), whichever is the lesser, shall be provided for the completion of the approved project work as set forth in Section 2.2, Scope of Work, and in Attachment I.

(b) County agrees to pay an amount which is no less than 20 percent of eligible costs as described in Section 3.3. County shall provide 100 percent of payment for any additional costs exceeding the grant amount (additional monies) that may be required to complete the scope of work under this Agreement according to the plans and specifications in Attachment I. If County fails on or before December 31, 2011 to complete to WisDOT's satisfaction any approved project element as set forth in Section 2.1 and any work as set forth in Section 2.2 and in Attachment I for which grant funds are expended, WisDOT's obligation to advance funds under this grant agreement shall cease. County, however, shall thereafter complete the project at no additional WisDOT expense as required under this Agreement.

(c) In the event actual costs for any project work item set forth in Section 2.2, Scope of Work, or in Attachment I total less than the estimated costs for that work item as set forth in Section 2.4(b), or in the event actual costs for all project work as set forth in Section 2.2, Scope of Work, and in Attachment I total less than the estimated costs for the entire project as set forth in Section 2.4(b), County is not authorized to increase any work item of the scope of work or add any new work elements to the project for the purpose of utilizing surplus grant funds created by the difference between actual costs and the grant amount.

(d) County hereby declares that it shall obtain its share of eligible costs (match) through an action of the County Board. In the event the County, for whatever reason, does not obtain all or any portion of the match and additional monies, the County remains obligated to provide match and additional monies for payment of eligible project costs approved by WisDOT. In the event the County terminates this grant agreement, it remains obligated to provide match and additional monies as may be accrued prior to termination.

#### Section 2.4 Project Budget

(a) WisDOT grant funds shall not comprise more than 80 percent of any progress payment, but may, due to payment of retainage amounts, exceed 80 percent of the last payment. Reimbursement of eligible costs for the approved project shall be on an actual cost basis as documented by sealed bids and time records, up to the maximum amount of 80 percent of eligible costs incurred by County under the terms of this Agreement, but in no event greater than \$7,141,835.

(b) The estimated budget line items are:

<u>Item</u>	<u>Total</u>	<u>Grant</u>	<u>County</u>
Provide stone for the construction of the 2.5 mile wave barrier			
Final Engineering and Project Management	8,927,294	7,141,835	1,785,459
	<hr/>	<hr/>	<hr/>
TOTALS	\$8,927,294	\$7,141,835	\$1,785,459

#### Section 2.5 Project Monitoring and Inspection

(a) County shall provide for qualified on-site inspection of the project work progress and quality by assignment of a County-selected, WisDOT-approved engineer who will act as the project engineer.

(b) The project engineer shall have overall responsibility for the management of the engineering, construction and administration of the project including inspection, preparation of daily diaries and reports, and approval of change orders and contractors' invoices for submittal to County.



(c) The project engineer shall be specifically qualified in construction inspection and project management and have general knowledge of marine construction. The project engineer shall provide for the daily monitoring of the project to assure compliance with the project contract, plans and specifications. The project engineer shall maintain accurate records, including photographs, indicating the quantity of work performed and materials used. These records shall show whether the work performed is in compliance with each applicable item of Attachment I. If work is unsatisfactory, the project engineer shall order corrective action. All costs of corrective action shall be paid by County and are not eligible for reimbursement under this Agreement. The project engineer shall report any instance of non-compliance with the terms of this Grant Agreement or its Attachment I or any questionable work to County and shall immediately send a copy of the report directly to WisDOT. County itself shall assure that all reports of non-compliance are promptly provided to WisDOT.

(d) The project engineer shall maintain a daily project diary and sign the diary at the end of each day. The diary shall be used to record progress of work, compliance with the plans and specifications as set forth in Attachment I, and any unusual events.

(e) WisDOT or its designee may conduct inspections of the project site, project diaries, books, reports and other documents, as frequently as deemed necessary by WisDOT. County shall ensure direct access to the project site and documents to any WisDOT inspector or designee at any reasonable time subject to reasonable security measures.

## ARTICLE 3.0 GRANT PAYMENT REQUIREMENTS AND PROCESS

### Section 3.1 Payment Schedule

(a) Invoices for payment shall be submitted to WisDOT no more frequently than monthly and no less frequently than quarterly other than for the single payment at the end of the project. No payments of any amount shall be made by WisDOT for eligible project costs incurred prior to County's compliance with all applicable conditions and requirements of this Grant Agreement including those set forth under Sections 2.2(a), 3.3(a)(b)(c), 4.1, 4.3, 11.2(a) and (b), 12.4(c) and Article 5.0 of this Agreement.

(b) Should any element of cost billed on the invoice be questioned by WisDOT as to its eligibility under this Agreement, WisDOT may except that cost item until questions concerning the cost item are resolved to the satisfaction of WisDOT. WisDOT shall pay any unquestioned cost reimbursement elements less any allowable retainages according to schedule except that WisDOT shall pay no amounts unless all monthly performance reports required under Section 4.3(a) of this Agreement have been submitted to and accepted by WisDOT.

(c) Until final acceptance by WisDOT of all the work on the approved project and until delivery of lien waivers from all contractors, subcontractors, material providers and suppliers involved with the approved project, WisDOT shall withhold payment of the final grant amount. The withheld amount shall be paid only upon replacement or correction to WisDOT's reasonable satisfaction of any and all deficiencies in work or project management cited by WisDOT in its final inspection of the approved project and only after receipt by WisDOT of all the required lien waivers.

### Section 3.2 Payment Process

(a) County shall submit each invoice to WisDOT, Railroads and Harbors Section, P. O. Box 7914, Madison, Wisconsin, 53707, Attention: Harbors and Waterways Program Manager, for reimbursement of approved project eligible costs incurred during the prior invoice period. With County's invoice to WisDOT, County shall attach copies of all invoices for eligible project costs incurred by County during the invoice period.

(b) WisDOT shall pay to County, subject to final project audit by WisDOT, an amount equal to 80 percent of the amount appropriately invoiced in accordance with this Agreement for approved project eligible costs, except that WisDOT shall withhold from each payment as a completion retainage an amount equal to 10 percent of WisDOT's share of the invoiced amounts until 50 percent of the work under each work task has been completed. After 50 percent approved project completion, WisDOT shall thereafter pay an amount equal to the full 80 percent of each amount invoiced for approved project eligible costs, unless the project is not proceeding satisfactorily pursuant to the plans and specifications and to the schedules prepared under Section 4.1; but amounts previously withheld by WisDOT shall not be paid to

County until final acceptance by WisDOT of all the work. At 50 percent approved project completion or any time thereafter, if the progress of work is not satisfactory pursuant to the plans and specifications and to the schedules prepared under Section 4.1, additional completion retainage amounts may be withheld by WisDOT, but in no event shall the amount withheld by WisDOT exceed 10 percent of the WisDOT grant share of the invoiced amounts for the work satisfactorily completed pursuant to the plans and specifications for each work task.

(c) County shall pay, as local matching funds, at least an amount equal to 20 percent of the invoiced amount. County shall provide 100% of payment for additional costs exceeding the grant amount.

### Section 3.3 Eligible Costs

(a) Costs, subject to the maximum grant amount allowable under this Agreement, incurred by County in the completion of any work under Section 2.2(a), (b), or (c), are eligible for reimbursement by WisDOT except:

(1) if incurred prior to the effective date of this Agreement, unless incurring of costs is approved in writing by WisDOT;

(2) if County fails to secure all necessary permits, licenses and authorizations, and fails to deliver signed copies thereof to WisDOT;

(3) if County fails to submit to WisDOT a copy of its or its contractor's general liability, worker's compensation, comprehensive business vehicle and other applicable insurance policies satisfactory to WisDOT, as required under Section 11.2(a) and (b);

(4) if County fails to secure WisDOT written approval of the contracts let for work for the approved project;

(5) if County fails to provide evidence to WisDOT that any and all contractors have obtained a performance and payment surety bond as required under Section 12.4(c); or

(6) if County fails to meet all applicable requirements in this Agreement or in the law.

(b) County shall, whenever available and consistent with the other provisions of this Agreement, take cash and trade discounts, tax exemptions, or other credits in connection with goods and services purchased or used on the approved project. County shall impose this requirement on any contractor or subcontractor when payment is based on costs incurred.

(c) If WisDOT or a federal or other state agency having jurisdiction determines that any material or work is deficient for whatever reason, County shall require the replacement of whatever materials or the correction of whatever work is necessary to cure the deficiency. County shall not use any WisDOT grant or County matching funds to pay for the replacement or correction required.

(d) All materials delivered to County or its contractors or subcontractors for use in performing the work set forth in the Scope of Work in Section 2.2 shall be appropriately accounted for upon delivery and protected from theft or damage by County at its expense. Replacement of damaged or stolen material is not an eligible cost under this Agreement. Damage to or theft of material is not an acceptable reason for non-performance of County's obligations under this Agreement. If WisDOT agrees, damage or theft may be an acceptable reason for an extension of the completion dates under this Agreement. Any extension of completion date shall be requested by County and before it becomes effective be approved by WisDOT in writing.

#### Section 3.4 Financial Management, Audit and Records

(a) County shall maintain, whether in the form of contracts, subcontracts or other documents, the following until the expiration of three years after the date of WisDOT acceptance of the final close out accounting which shall include:

(1) Records that identify the sources and applications of all funds for the approved project and that contain information pertaining to grant awards, draw downs, obligations, unobligated balances, assets, liabilities, outlays and income;

(2) Original invoices, employee time sheets and all other supporting source documents;

(3) Bid documents, contracts, subcontracts and all documentation underlying the preparation of the project financial reports and the grant budget; and

(4) All accounting documents of County pertaining to the approved project. (These accounting documents shall be clearly identified and readily accessible to WisDOT and its designees. County shall also impose this requirement upon each of its contractors and ensure that it is imposed on each subcontractor.)

(b) The Secretary of WisDOT and any duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients of funds under this Agreement which in the opinion of the Secretary or designee may be related or pertinent to the approved project for which County has received or is or may be entitled to receive assistance under this Agreement. County shall impose this requirement on each of its contractors and ensure that it is imposed on each subcontractor.

(c) All costs charged to this project shall be supported by documents evidencing in detail the nature and propriety of the charges. All accounting and other documents pertaining to the project shall be clearly identified and readily accessible to WisDOT representatives or designees.

(d) County shall establish a separate account showing receipts and disbursements of all funds provided under this Agreement. This system of accounts shall permit the clear differentiation of charges to the project from expenditures made by County for non-project work. Contractors and subcontractors shall be required to maintain accounts that differentiate receipts and disbursements in a similar manner.

(e) WisDOT may conduct and prepare a final project audit of the use of WisDOT provided funds. County shall fully cooperate with WisDOT and its representatives in the conducting and preparing of such a final project audit and shall also require its contractors and subcontractors to do so. All payments to County shall be subject to a claim for refund by WisDOT based upon the final project audit.

(f) The County shall have a single, organization-wide financial and compliance audit performed by a qualified independent auditor if required to do so under federal law and regulations (see federal Circular No. A-128, Section 4).

(g) The audit specified in Section 3.4(g) shall be performed in accordance with federal Circular A-128 issued by the federal Office of Management and Budget (OMB) and state single audit guidelines issued by the Wisconsin Department of Administration (DOA). State programs will be included in the scope of the single organization-wide financial and compliance audit.

#### ARTICLE 4.0 REPORTING

##### Section 4.1 Work Task Scheduling

Prior to starting the work described in Section 2.2(b), County shall provide WisDOT with a schedule of anticipated work progress by month for each approved project work item. The schedule shall follow a format acceptable to WisDOT. The schedule shall be updated monthly to show anticipated work to be done both during the next month and during the following months through project completion. The updated schedule shall be submitted to WisDOT with the monthly performance report required by Section 4.3(a).

#### Section 4.2 Immediate Reporting

County shall report to WisDOT immediately in writing whenever there is any condition under federal, state or local law or there is any other circumstance that may significantly affect:

(a) County's ability to pursue any aspect of the approved project in accordance with the provisions of this Agreement, or

(b) County's continuing eligibility for financial assistance under this Agreement.

#### Section 4.3 Routine Reporting

(a) If during any month, a County contractor or subcontractor has performed work on the approved project, County shall file a monthly performance report with the next invoice for payment from WisDOT. The report shall include the following information:

(1) The total accumulated, approved project costs incurred to the end of the month and the estimated costs remaining to complete the project;

(2) Unit costs of materials, labor and equipment charged to the project for the period covered by the report;

(3) The percentage of completion of each work item of the approved project and the estimated date of completion of each work item;

(4) A narrative describing all work completed during the past month;

(5) A narrative description of any difficulties or delays encountered, including an explanation of any cost overruns or higher than budgeted unit costs and any corrective action taken or to be taken to address the difficulties, or delays, or cost overruns;

(6) An explanation of any anticipated difficulties or delays until the end of the project and the action to be taken in an effort to avoid such difficulties or delays; and

(7) Any additional narrative necessary to explain any major change that has been made during the past month to the monthly schedule of anticipated work progress.

(b) All financial reports shall be prepared on the same basis as County's accounting records unless WisDOT shall direct otherwise in writing. All records and reports shall be kept in accord with generally accepted accounting principles.

#### ARTICLE 5.0 PERMITS AND LICENSES

County shall obtain all necessary valid permits, licenses and authorizations required for the completion of the approved project. Costs associated with the acquisition of permits, licenses and authorizations are not eligible for reimbursement under this Grant Agreement. No payment of grant funds for eligible costs incurred for performance of any work shall be made by WisDOT prior to County's having secured all necessary permits, licenses, and other authorizations and having delivered executed copies of each to WisDOT. County shall file with WisDOT one executed copy of each required permit, license or other authorization upon execution of this Agreement or within fifteen days following the acquisition of the permit, license, or other authorization documents by the County. Failure to obtain and deliver to WisDOT all necessary permits, licenses or other authorizations on or before June 30, 2011 shall terminate this Agreement under the terms of Article 8.0 herein. If at some date after June 30, 2011 it is determined by a court of competent jurisdiction that a permit, license, or authorization other than those submitted to WisDOT under this Article is necessary to complete the project, County shall, within 180 days from the date of notice to County by WisDOT, either obtain such permit, license or authorization or return to WisDOT all amounts paid by WisDOT under the terms of this Agreement.

Permits and licenses referred to in the above paragraph are "major" permits and licenses required for authorization of the project. Minor permits and licenses required during the course



of the work, and normally only issued to the contractor at the time of the work, will not be an eligible cost and will be obtained as the project work progresses.

#### ARTICLE 6.0 TERMINATION

In the event County fails to perform any of its obligations under this Agreement, WisDOT may, at its option, give 10 days written notice thereof to County. Upon failure of County to correct the breach within 10 days following written notice, WisDOT shall have the right, at its option, to terminate this Agreement by giving written notice by certified mail to County. Notwithstanding the foregoing, if the default for which notice is given is not capable of being cured within 10 days following written notice and if County has taken reasonable steps to initiate a cure of said default within the 10 day period, then at the sole discretion of the WisDOT, communicated to County in writing, County may have a reasonable period to cure the default. WisDOT's exercise of the right to terminate shall not impair any other rights of action or claims under this Agreement or under the law against County. This Agreement may be terminated by mutual agreement of the parties at any time. If this Agreement is terminated for any reason whatsoever, County shall take, at its sole cost and expense, any and all appropriate action to permanently maintain the approved project site in a condition that poses no threat or hazard to navigation or the public and that complies with all applicable laws and regulations and with any conditions set forth in the permits, licenses and authorizations secured by County under this Agreement. County shall bear all expenses of termination, if this Agreement is terminated at the request of County, or a County contractor or a County contractor's subcontractor, defaults on any term or provision of this Agreement.

#### ARTICLE 7.0 CONTRACT PERIOD

This Agreement shall be in effect upon the date set forth on page one of this Grant Agreement and shall continue in effect for twenty-five (25) years from the completion of the approved project work or until terminated under Article 8.0. The approved project work shall be completed in accordance with this Grant Agreement before December 31, 2011. If it is not so completed by December 31, 2015, County shall repay all the grant funds advanced to it as required under Section Trans. 28.08(5) (intro.) and (a), Wis. Admin. Code. If the approved

project is not operated and adequately maintained for the purpose of transferring commercial cargoes, or if the approved project is converted to a use inconsistent with the purposes of the Harbor Assistance Program, or if the approved project is inconsistent with the terms of this Grant Agreement during the 25 year period set forth above, or if this Grant Agreement is cancelled or terminated for any reason whatsoever, WisDOT shall require full repayment of all funds advanced to County, and County shall promptly pay all such funds to WisDOT upon demand by WisDOT.

## ARTICLE 8.0 REPRESENTATIONS AND WARRANTS

### Section 8.1 WisDOT

WisDOT represents and warrants that it has the power and authority to enter into this Agreement under s.85.095, Wis. Stats.

### Section 8.2 County of Brown

County represents and warrants that it has the power and authority to enter into this Agreement and that entering into this Agreement does not violate any statute, rule or regulation and does not violate any order, writ, injunction or decree of any court, administrative agency or other governmental body.

## ARTICLE 9.0 LIABILITY AND INSURANCE

### Section 9.1 Hold Harmless

County shall save and hold WisDOT, its officers, employees and agents, harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of County, its officers, employees or agents, its contractors, or its contractors' agents, servants, subcontractors or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation which happens, or is alleged to have happened, in or about a place where such act, omission or

operation is performed or should be performed or in the vicinity thereof (1) while a County contractor or subcontractor is performing its work on the approved project, or (2) during the period this Agreement between WisDOT and County is in effect, or (3) while any of County's contractor's or subcontractor's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of County's contractor's or subcontractor's operations including, without limiting the applicability of the foregoing the following: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, contractors, subcontractors or frequenters, or to any other person or legal entity whether based upon, or claimed to be based upon, contract or tort or having its basis in worker's compensation under federal or state statutes or having any other code or statutory basis or based upon administrative rules or other provisions or other liability of WisDOT, County, or any other persons, and whether or not caused or claimed to have been caused by the negligence or other breach of duty by WisDOT, its officers, employees, agents, contractors, subcontractors or frequenters, County, its officers, employees, agents, contractors, subcontractors or frequenters, or any other person or legal entity. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trade-mark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. County shall cause its contractors to, at its or their own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action identified in this section.

## Section 9.2 Insurance

(a) During the entire construction of the approved project and covering all claims arising out of any action or inactions connected in any way to the approved project or to any work on the approved project, regardless of when first asserted, the County or its contractors shall maintain, at its or their own cost and expense, a comprehensive general liability insurance policy, with per occurrence limits of not less than \$2,000,000, providing that WisDOT and its officers, employees and agents are named as additional insureds under the policy or policies. County shall cause to

be furnished to WisDOT evidence satisfactory to WisDOT of the comprehensive general liability policy providing coverage satisfactory to WisDOT. In the event of suspended coverage, any modification in terms of this coverage or insurance cancellation, both the insurance carrier and County shall provide WisDOT with written notification of such suspension, modification or cancellation no less than 10 days prior to the suspension, modification, or cancellation. If, upon receipt of such notice, County shall desire to continue this Agreement in effect, County or its contractors shall purchase, at its own cost and expense, such insurance as WisDOT shall deem necessary in its reasonable judgement. Failure to have and to maintain the requisite insurance coverage in full accord with this section is grounds for the immediate termination of this agreement by WisDOT. Such termination, however, shall not impair any other right of action of WisDOT against County under this Agreement or as otherwise provided by law.

(b) During the entire construction of the approved project and covering all claims arising out of any actions or inactions connected in any way to the approved project or to any work on the approved project, regardless of when first asserted, County and its contractors, as appropriate shall also maintain, at its or their own cost and expense, the types and amounts of insurance coverage shown below:

<u>KIND OF INSURANCE</u>	<u>MINIMUM OF LIABILITY</u>
Worker's Compensation (Including Employer's Liability)	Statutory (\$500,000)
Comprehensive Business Vehicle (Including owned and non-owned) Combined Single Limit Liability	\$1,000,000 each occurrence
Longshoreman's and Harbor Worker's Compensation (as applicable under 33 U.S.C. 901, et seq.)	Statutory
Merchant Marine Compensation (as applicable under 46 U.S.C. 688)	Statutory
Contractor's Pollution	\$1,000,000 each occurrence

## Liability

Truckers/Haulers  
Commercial Auto Liability  
Endorsed for Pollution

\$1,000,000 each occurrence

County shall cause to be furnished to WisDOT evidence satisfactory to WisDOT of the worker's compensation, comprehensive business vehicle and all other applicable policies providing coverage satisfactory to WisDOT. In the event of suspended coverage, any modification in terms of this coverage or insurance cancellation, both the insurance carrier and County shall provide WisDOT with written notification of such suspension, modification or cancellation no less than 10 days prior to the suspension, modification, or cancellation. If, upon receipt of such notice, County shall desire to continue this Agreement in effect, County or its contractors shall purchase, at its own cost and expense, such insurance as WisDOT shall deem necessary in its reasonable judgement. Failure to have and to maintain the requisite insurance coverage in full accord with this section is grounds for the immediate termination of this agreement by WisDOT. Such termination, however, shall not impair any other right of action of WisDOT against County under this Agreement or as otherwise provided by law.

(c) The contractor performing the work set forth in the Scope of Work in Section 2.2(a) shall maintain a professional pollution liability insurance policy with per occurrence limits not less than \$1,000,000.

## ARTICLE 10.0 GENERAL PROVISIONS

### Section 10.1 Notice

Any notice required or permitted under this Agreement shall be personally served in writing upon the other party by the party giving notice or shall be served by certified mail, return receipt requested, to the following addresses:

Chief, Railroads and Harbors Section  
Wisconsin Department of Transportation  
P.O. Box 7914  
Madison, WI 53707

Port Manager, Port of Green Bay  
Brown County Ports and Solid Waste  
2561 Broadway  
Green Bay, WI 54304

#### Section 10.2 Designation of Officials

The WisDOT officials authorized to execute any changes in the terms, conditions, or amounts herein on behalf of WisDOT are the Secretary or Deputy Secretary of WisDOT or the Administrator of the Division of Transportation Investment Management of WisDOT. The County official authorized to execute any changes in the terms, conditions, or amounts herein on behalf of County is the Port Manager.

#### Section 10.3 Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and of the State of Wisconsin.

#### Section 10.4 Contracts

(a) WisDOT has the right to review the contracting and procurement system of County, and County shall assure that WisDOT has the right to review the contracting and procurement system of each contractor. These purchasing and contracting procedures of County and its contractors to obtain goods and services for use in connection with the approved project are subject to review by WisDOT upon reasonable notice. County's contracting procedures shall comply with s.30.32, Wis. Stats.

(b) County shall provide for WisDOT review and written approval of all contracts to be paid in whole or in part with funds provided under this Agreement. County shall obtain WisDOT written approval prior to executing any contract pertaining in any way to the approved project. Failure to obtain prior written approval from WisDOT for a contract shall result in no reimbursement with grant funds for costs incurred under that contract.

(c) County shall require each successful bidder, at the time a written contract between County and the contractor is signed, to submit to County a good and sufficient surety bond for the full amount of the contract. The surety bond shall be conditioned upon the faithful performance of the contract and upon the payment of all claims for labor performed and materials furnished under the contract. County shall immediately upon signing a contract submit to WisDOT evidence that a good and sufficient surety bond is in effect. All contracts and surety bonds shall comply with all applicable provisions of s.30.32 and s.779.14, Wis. Stats. WisDOT shall not pay County any amount due under a construction contract until after WisDOT has received satisfactory evidence that a good and sufficient bond complying with s.30.32 and s.779.14, Wis. Stats., is in effect for at least the amount of that contract.

#### Section 10.5 Status of County's Contractor

Any contractor or subcontractor with County, whether acting through its officers, directors, employees, agents or representatives or otherwise, is an independent contractor and in no way shall be deemed an affiliate, partner, joint venturer, or associated in any manner whatsoever with WisDOT.

#### Section 10.6 Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. County's rights hereunder shall not, however, be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without WisDOT's prior written consent.

#### Section 10.7 Severability

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, condition or provision (or remainder thereof) to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

#### Section 10.8 Amendment

No term or provision of this Agreement nor any of its attachments may be changed, waived, or terminated orally but only by an instrument in writing signed by both parties to this Agreement.

#### Section 10.9 Force Majeure

The parties hereto shall be excused from the scheduled performance of their respective obligations hereunder occasioned by an event beyond their respective control (not due to their own fault, actions, or inactions), which shall include, without limitation: acts of God; strikes or



other labor troubles; explosions, fires, vandalism, or malicious mischief; or other causes beyond the reasonable control of the parties. Such excuse shall remain, however, only so long as the event excusing performance shall continue and shall not excuse continued non-performance thereafter.

#### Section 10.10 Disabled

County agrees that no otherwise qualified disabled individual in the United States, as defined in Section 706(8) of Title 29 U.S.C, or as specifically provided for in subchapter II of Chapter 111, Wis. Stats., or in Title I of the Americans With Disabilities Act of 1990, 42 U.S.C. 12111, et seq., shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

#### Section 10.11 Environmental Protection

(a) County agrees that facilities or equipment shall not be acquired, constructed, or improved as a part of this approved project unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulations.

(b) County agrees to conduct all aspects of the approved project in compliance with all the requirements of Section 114 of the Clean Air Act, 42 U.S.C 7414, and of Section 308 of the Federal Water Pollution Control Act, 33 U.S.C 1318, and of all applicable regulations issued under those Acts.

(c) County assures that the environmental impact of the approved project has been assessed in accordance with the requirements of the Wisconsin Environmental Policy Act, s. 1.11, Wis. Stats.

(d) County agrees to include, or cause to be included, the criteria and requirements contained in this section in any contract or subcontract under which any of the financial obligations incurred are to be paid from funds provided under this Agreement.

(e) No publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials, may be used for this approved project without the prior written concurrence of the Secretary of the Wisconsin Department of Natural Resources, the State Historical Preservation Officer, and required federal authorities.

#### Section 10.12 Prohibited Interests in the Proceeds of Approved Project

(a) Neither County nor any of its contractors shall enter into any contract, subcontract, or agreement in connection with the approved project or any property included or planned to be included in the approved project in which any official, officer or employee of the County during his or her tenure or for one (1) year thereafter has any interest, direct or indirect, except as permitted under s.946.13(2), Wis. Stats.

(b) County shall insert in all agreements entered into by it in connection with the approved project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No official, officer or employee of the County of Brown during his or her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this contract or in the proceeds thereof except as permitted under s.946.13(2), Wis. Stats."

(c) No member of or delegate to Congress or to the Wisconsin State Legislature shall share any benefit that may arise from this Agreement.

#### Section 10.13 Nondiscrimination

(a) In connection with the performance of work under this Agreement, County agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, County further agrees to take affirmative action to ensure equal employment opportunities. County agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by WisDOT setting forth the provisions of this nondiscrimination clause.

(b) Pursuant to s. 16.765, Wis. Stats., County shall insert into all agreements entered into by it in connection with the approved project, and shall require its contractors to insert in each of their subcontracts, the provision in paragraph (a), of this Section, except that the word "County" shall be stricken and replaced by the word "contractor" and the word "WisDOT" shall be stricken and replaced by "County".

(c) County shall comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its contractors and subcontractors through contractual agreement to similarly comply:

(1) Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d et seq.

(2) Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq.

(3) Subchapter II of Chapter 111, Wis. Stats.

(4) Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(5) Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 653, et seq., and any other applicable occupational safety and health laws or regulations.

#### Section 10.14 Wage Rates

(a) Pursuant to s.66.293, Wis. Stats., County shall apply to the Wisconsin Department of Workforce Development to determine the prevailing wage rate, hours of labor and hourly basic pay rates in all trades and occupations required in the approved project. The prevailing wage rates and hours shall be published in the project bidding specifications and incorporated into and made a part of all approved project construction contracts.

(b) County shall insert the following provisions in all construction contracts entered into by it in connection with the approved project:

"The contractor hereby agrees that all persons employed by it in the performance of this contract shall be paid wages which are not less than the prevailing wage rates which are incorporated into this contract. The contractor hereby agrees to keep and to require all subcontractors to keep full and accurate records clearly indicating the name and trade or occupation of every laborer, worker, or mechanic employed by him in connection with the project and an accurate record of the number of hours worked by each employee and the actual wages paid therefor.

Upon completion of the project and prior to final payment, the contractor agrees to file with the County an affidavit stating that it has complied fully with the provisions and requirements of s.66.293(3), Wis. Stats., and that it has received evidence of compliance from each of its agents and subcontractors."

(c) County shall not submit to WisDOT any invoices for final payment on any contract until the contractor's affidavit of compliance is filed in proper form and order.

#### Section 10.15 Assurances

(a) County assures WisDOT that funds received under this Agreement will be used solely for the purposes for which the assistance is granted and in conformance with any limitations on any allowable expenditures set forth under the federal or state laws applicable to the funds granted.

(b) County hereby accepts all attendant responsibilities and liabilities associated with its use of WisDOT grant funds including, if applicable, liability for accidents and responsibility for erection and maintenance of fencing and other safety and protective devices.

#### Section 10.16 Entire Agreement

This Agreement and the attachments hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

#### Section 10.17 Entry to Project Site

WisDOT or its agents may enter the premises and improvements at any reasonable time upon reasonable notice for any purpose WisDOT may deem necessary or desirable, provided that WisDOT's entry on the premises and improvements may not unreasonably interfere with normal use and occupancy.

ARTICLE 11.0 SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Witness:

COUNTY OF BROWN, WISCONSIN

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Witness:

WISCONSIN DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTACHMENT I

Plans and Specifications for Restoration of the Cat Islands Chain.

*(to be supplied at a later date)*